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**CATHOLIC CHARITIES/CATHOLIC SOCIAL SERVICES –
STATUS OF DCFS FOSTER CARE AND ADOPTION SERVICES**
July 14, 2011

There have been important developments over the last few months regarding Catholic Charities and Catholic Social Services and the provision of foster care and adoption services, in light of the new civil union law (*The Illinois Religious Freedom Protection and Civil Union Act*).

At the end of May 2011, Catholic Charities of the Diocese of Rockford decided to end its contract with DCFS for foster care and adoption services due to the threat of potential litigation around this issue. DCFS has since transitioned Rockford's approximately 300 cases to Youth Services Bureau of Ottawa, Illinois.

In early June 2011, three Catholic Charities agencies (Joliet, Peoria and Springfield) filed a lawsuit for a declaratory judgment and other relief in the Circuit Court for the Seventh Judicial Circuit in Sangamon County, Illinois. Catholic Social Services of Southern Illinois (Diocese of Belleville) will soon be added as a party to the lawsuit. The agencies are being represented in this case by the Thomas More Society. The reason for this lawsuit is to affirm that religious agencies are acting in compliance with all Illinois laws, including the civil union law, in their policies of referring to DCFS any cohabitating couples, which would include civil union couples, seeking to become foster parents.

In the meantime, this past June, DCFS sent contracts for FY 2012 to these four agencies, which they each signed and returned. However, on July 8, DCFS sent notice to the four agencies that the contracts would not be renewed for FY 2012. On July 12, the Sangamon County Circuit Court heard a motion for a temporary injunction against the cancellation of these contracts and any transition of cases from Catholic Charities to other agencies. The judge did grant the temporary injunction, ordering that the DCFS contracts with our agencies be temporarily

reinstated as they were on June 30, 2011. A full hearing on the lawsuit will be held by the Sangamon County Circuit Court in August.

Specifically, our agencies are arguing that:

1. **Religious adoption agencies are exempt from the provisions in the Illinois Human Rights Act regarding places of public accommodation.** The Illinois Human Rights Act, which prohibits discrimination on the basis of marital status and sexual orientation, provides examples of places of public accommodation. The language of the Act specifically lists that non-sectarian adoption agencies are places of public accommodation (see 775 ILCS 5/5-101(A)(12)). Because the law specifically lists non-sectarian adoption agencies, the obvious implication is that sectarian (or religiously-based) adoption agencies, including Catholic Charities and Catholic Social Services, are **not** places of public accommodation, and therefore are exempt from the Act.
2. **Religious agencies are exempt from the Illinois Religious Freedom Protection and Civil Unions Act.** The civil union law stated in Section 15 that “Nothing in this Act shall interfere with the religious practice of any religious body.” During the Senate debate on the bill, Senator Koehler (the Senate sponsor) was asked if this language was meant to refer to religious practices such as “social services, retreats, religious camps, homeless shelters, senior care centers, adoption agencies, hospitals.” Senator Koehler responded that his intent “is not to at all... impede the rights that religious organizations have to carry out... what their duties and... religious activities are.” Therefore, religious agencies are exempted from the civil union law, and furthermore, the ability of religious agencies to provide social services, including foster care and adoption services, is not to be impeded by this law.
3. **The Illinois Religious Freedom Restoration Act protects the religious freedom of religious agencies in the provision of foster care and adoption services.** The Illinois Religious Freedom Restoration Act states that the government may not substantially burden a person’s exercise of religion unless such burden both furthers a compelling government interest **and** is the least restrictive means of furthering that interest. The exercise of religion by our Catholic agencies is substantially burdened if the provisions of the Illinois Human Rights Act, as they pertain to places of public accommodation, are applied to them or if the civil union law is read to require religious agencies to process foster parent applications for or to make placements with civil union couples. There is no compelling government interest in placing such a substantial burden on religious agencies, and moreover, the “least restrictive alternative” in this issue would be to allow religious agencies to refer civil union couples to DCFS, through which they would have ample opportunity to become foster parents with other agencies. The state’s refusal to allow for such referrals is in violation of the Illinois Religious Freedom Restoration Act.

Currently, we are awaiting the outcome of the August 17th hearing before the Sangamon County Circuit Court. We hope for a resolution that will allow Catholic Charities and Catholic Social Services to continue providing care to approximately 2,500 of the most vulnerable children in the state.

In addition, the Catholic Conference of Illinois submitted written comments to DCFS regarding their recently proposed administrative rules to implement the civil union law. We have suggested that DCFS include language (similar to the proposed amendment to Senate Bill 1123) in their rules to clarify that, in accordance with all Illinois laws, religious child welfare agencies may decline to process foster parent applications for civil union couples and will provide these couples with referrals to DCFS.

Any questions on this can be directed to our Chicago office at (312) 368-1066.